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In The
Supreme Court of the United States
October Term, 1985

STATE OF CALIFORNIA, *et al.*,
Appellants,
v.
CABAZON BAND OF MISSION INDIANS, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals
For the Ninth Circuit

AMICI CURIAE BRIEF OF CHEHALIS INDIAN TRIBE, KEWEENAW BAY INDIAN COMMUNITY, SANTA YNEZ BAND OF MISSION INDIANS AND OTHER FEDERALLY RECOGNIZED INDIAN TRIBES IN SUPPORT OF APPELLEES

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TABLE OF CONTENTS

Page(s)

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

I. TRIBES ARE ENGAGED IN GAMING OPERATIONS FOR THE SAME REASONS AS STATES. 3

II. ABSENT CONGRESSIONAL DELEGATION OF POWER TO THE STATES, INDIAN TRIBES RETAIN EXCLUSIVE JURISDICTION TO REGULATE ON-RESERVATION ACTIVITY. 6

A. Indian Tribes are Semi-independent Entities which are Subject to State Control Only upon Congressional Delegation. 6

B. The Authority of Tribes to Regulate Reservation Activity is Well Established. 7

(1) Bingo involves on-reservation activity that directly impacts tribal government and tribal members. 8

(2) Tribes generate value from their bingo games. 10

(3) Bingo is a legitimate method of raising tribal revenue and is exempt from state interference. 11

III. PUBLIC LAW 280 DOES NOT AUTHORIZE STATES TO REGULATE BINGO GAMES OPERATED BY INDIAN TRIBAL GOVERNMENTS ON TRIBAL RESERVATION TRUST LAND. 13

A. California's Bingo Statute is a Civil Regulatory Law, and Therefore May Not be Applied to Tribal Bingo under the Authority of Public Law 280. 13

TABLE OF CONTENTS—Continued

Page(s)

(1) The civil / regulatory-criminal / prohibitory test is a necessary and proper method for determining whether Public Law 280 authorizes state law to be applied on an Indian reservation. 14

(2) California's bingo statute is civil regulatory for purposes of Public Law 280. 16

B. Even if Public Law 280 does Apply to Tribes, State Bingo Statutes, like California's, are Expressly Excluded from the Act's Coverage. 18

IV. *RICE V. REHNER* IS NOT CONTROLLING IN THIS CASE. 20

A. The Tribal "Tradition" Analysis of *Rice* is Appropriate to the Question of whether Public Law 280 Vests the States with Authority to Regulate Tribally-Operated On-Reservation Gaming Activities. 20

B. The Ninth Circuit Properly Limited the Holding in *Rice* to Its Specific Factual and Legal Context. 23

C. The Federal Courts have been Unwilling to Extend the Tribal Tradition Analysis of *Rice* Beyond Its Narrow Context. 24

D. Since Deciding *Rice*, this Court in an Analogous Situation has Repudiated the use of Judicial Appraisals of whether a Particular Governmental Function is "Traditional" in Determining the Scope of Governmental Regulatory Authority. 26

CONCLUSION 30

TABLE OF AUTHORITIES

Page(s)

CASES:

Barona Group v. Duffy, 694 F.2d 1185 (9th Cir. 1982), *cert. denied*, 461 U.S. 929 (1983) 15

Bryan v. Itasca County, 426 U.S. 373 (1976) ..... 2, *passim*

Cabazon Band v. County of Riverside, 783 F.2d 900 (9th Cir. 1986) 22, 24

Crow Tribe of Indians v. State of Montana, 650 F.2d 1104 (9th Cir. 1981), *modified at* 665 F.2d 1390 (1982) 25

DeCoteau v. District Court, 420 U.S. 425 (1975) 7

Florida Central Railroad Co. v. Schutte, 103 U.S. 118 (1881) 14

Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528, 83 L.Ed.2d 1016, 105 S.Ct. 1005 (1985) 3, 26, 27, 28, 29

Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412 (1937) 13

Johnson v. Yellow Cab Transit Co., 321 U.S. 383 (1944) 14

Kerr-McGee Corporation v. Navajo Tribe of Indians, 471 U.S. —, 85 L.Ed.2d 200, 107 S.Ct. — (1985) 8

Lone Wolf v. Hitchcock, 187 U.S. 553 (1903) 6

McClanahan v. State Tax Commission of Arizona, 411 U.S. 164 (1973) 7

Meklakatla Indian Comm. v. Egan, 369 U.S. 45 (1962) 19

Menominee Tribe v. United States, 391 U.S. 404 (1968) 7

Mescalero Apache Tribe v. Jones, 44 U.S. 145 (1973) 8, 20

Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463 (1976) 11

National Farmers Union Insurance Company v. Crow Tribe, 471 U.S. —, 85 L.Ed.2d 818, 105 S.Ct. 2447 (1985) 6

TABLE OF AUTHORITIES—Continued

Page(s)

National League of Cities v. Usury, 426 U.S. 833 (1976) 27

New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983) 7

Quechan Tribe v. Rowe, 350 F. Supp. 106 (S.D. Cal. 1972), *aff'd and remanded*, 531 F.2d 408 (9th Cir. 1976) 19

Queets Band of Indians v. State of Washington, 765 F.2d 1399 (9th Cir. 1985), *vacated and withdrawn on other grounds*, 783 F.2d 154 (1986) 24

Rice v. Rehner, 463 U.S. 713 (1983) ..... 3, *passim*

Rosebud Sioux Tribe v. Kneip, 430 U.S. 534 (1977) 6

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) 7

Santa Rosa Band v. Kings County, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977) 19

Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982) 3, 8, 15

Seneca-Cayuga Tribe v. State of Oklahoma, — F. Supp. —, Civ. Nos. 85-C-639-B and 86-C-393-B (N.D. Okla., June 5, 1986) 15, 25

Solem v. Bartlett, 465 U.S. 463 (1984) 18

State of Washington v. Confederated Tribes of the Colville Reservation, 447 U.S. 134 (1980) 6, 7, 8, 10, 11

Three Affiliated Tribes v. Wold Engineering, 476 U.S. —, 90 L.Ed.2d 881, 106 S.Ct. 2305 (1986) 2, 13, 15, 18, 20

Transportation Union v. Long Island Railroad Co., 455 U.S. 678 (1982) 27

United States v. Antelope, 430 U.S. 641 (1977) 7

TABLE OF AUTHORITIES—Continued

Page(s)

United States v. Farris, 624 F.2d 890 (9th Cir. 1980), *cert. denied*, 449 U.S. 1111 (1981) 15

United States v. Maracyes, 557 F.2d 1361 (9th Cir. 1977) 15

United States v. Mazurie, 419 U.S. 544 (1975) 18

United States v. Wheeler, 435 U.S. 313 (1978) 7, 21

Washington v. E.P.A., 752 F.2d 1465 (9th Cir. 1985) 24

White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980) 6

Williams v. Lee, 358 U.S. 217 (1959) 7, 8

Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832) 6

STATUTES:

Indian Child Welfare Act, 25 U.S.C. § 450, *et seq.* 4

Indian Child Welfare Act, 25 U.S.C. § 1901, *et seq.* (1978) 5

Indian Civil Rights Act, 25 U.S.C. § 1301, *et seq.* (1968) 5

Indian Financing Act of 1974, 25 U.S.C. §§ 1451-1543 5

Indian Reorganization Act, 25 U.S.C. § 476 19

Indian Self-Determination Act of 1975, 25 U.S.C. §§ 450f-450n 4

Indian Tribal Governmental Tax Status Act, 26 U.S.C. § 7871 (1983) 5

Mission Indian Relief Act, 26 Stat. 712 (1891) 19

Public Law 280, Sections 2(b) and 4(b) 18, 19, 20

18 U.S.C. § 1162(b) 19

28 U.S.C. § 1360(b) 19

TABLE OF AUTHORITIES—Continued

Page(s)

18 U.S.C. § 1161 ..... 20, 21, 23

18 U.S.C. § 1955 21

25 C.F.R. 1.4 19

MISCELLANEOUS:

A Bill to Establish Federal Standards and Regulations for the Conduct of Gaming Within Indian Country and for Other Purposes, 1986: Hearings on S.902 Before the Senate Select Committee on Indian Affairs, 99th Cong., 2d Sess. (1986) 9

Cohen, *Handbook of Federal Indian Law* (1982 ed.) 7

Indian Service Population and Labor Force Estimates, January 1985, Bureau of Indian Affairs 4

President Reagan's Policy Statement, January 16, 1983 5

INTEREST OF AMICI CURIAE

The tribes submitting this brief are a representative cross-section of federally-recognized Indian tribes. Without exception, their resources are limited and the needs of their people in terms of health, education and employment are great. Most occupy lands that have scarce or nonexistent natural resources and are located in rural or semi-rural areas. As a consequence, the opportunities for economic development on their reservations are severely limited.

A few of the *amici* tribes have formed and are operating tribal bingo enterprises. Some are presently considering bingo as a means of raising badly needed tribal governmental revenues and of generating reservation employment. A significant number, however, have neither initiated, nor do they intend to initiate, tribal bingo operations. For these tribes, this decision is primarily based on geographic factors making tribal bingo operations economically unfeasible, or on a tribal decision to pursue other alternatives for economic development. However, all of the *amici* tribes share a common and overriding interest in the outcome of this litigation: to protect and preserve their right to initiate, conduct and regulate tribal governmental activities on lands that have been expressly set aside for their use and benefit. All of the *amici* tribes are, therefore, acutely aware that tribal self-government and economic development, and not simply Indian bingo, are the "high stakes" at issue in this case.

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SUMMARY OF ARGUMENT

I

California and the *amici* states seek to deny the Tribes the very right that they themselves freely exercise—the

right to raise revenue through the operation and regulation of gaming. Yet tribally-operated bingo games neither interfere with a state's ability to raise its own revenue, nor impose any involuntary tax or other regulatory burden on non-Indians. Nor does any federal law or policy authorize the States to make such a severe intrusion into tribal self-government. Federal law and policy in fact encourage this very kind of tribal economic development.

II

California believes it has the right to dictate to tribes and directly control the kinds of economic development enterprises they may develop. This is completely contrary to federal law and the decisions of this Court. Absent express delegation from Congress the States have no authority over Indian reservations. That authority instead rests in the tribes or the Federal government. Tribal authority is paramount unless expressly taken by Congress or, in rare instances, found lacking by implication from tribes' dependent status. Congress has not delegated to the States any authority over tribal bingo enterprises operated on reservation tribal trust land. Nor has Congress taken such authority away from the Tribes.

III

In *Bryan v. Itasca County*, 426 U.S. 373 (1976), this Court interpreted Public Law 280 as only a limited grant of jurisdiction to the States, which did not include regulatory jurisdiction. This Court has recently reaffirmed the correctness of the *Bryan* analysis of Public Law 280. *See Three Affiliated Tribes v. Wold Engineering*, 476 U.S. —, 90 L.Ed.2d 881, 106 S.Ct. 2305 (1986) [hereinafter *Three Tribes II*]. Numerous lower federal courts have correctly applied that analysis in rejecting state regulation of tribal bingo.

California argues that its bingo law is not merely regulatory in nature, but rather prohibits tribal high stakes bingo as a matter of public policy. But California not only generally permits the operation of bingo games, it also sanctions a multimillion dollar lottery and other forms of high stakes gaming. And, since the Tribes regulate their own games with federal assistance, the State's claimed policy against "unregulated" high stakes gaming is not impaired.

IV

California's reliance on this Court's decision in *Rice v. Rehner*, 463 U.S. 713 (1983), is equally unavailing. Unlike the unique circumstances in *Rice* concerning regulation of liquor, there is in this case no similar federal statute supporting a tradition of exclusive state regulation of gaming on reservation. Furthermore, the so-called "tradition" analysis, advanced by the State for determining whether tribes have traditionally regulated a particular activity, was recently rejected by this Court in a similar context. *See Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 83 L.Ed.2d 1016, 105 S.Ct. 1005 (1985).

ARGUMENT

I

TRIBES ARE ENGAGED IN GAMING OPERATIONS FOR THE SAME REASONS AS STATES.

What is fundamentally at stake in this case is the right of Indian tribes to raise revenue in the same way the States do—through the conduct and regulation of gaming. Prior to *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982), the States had always assumed that they had a monopoly on the raising of revenue through lotteries and the taxation of gambling receipts. This is no small advantage.

In the area of lotteries alone, the various states generate huge sums of money. Maryland, for example, has generated net proceeds of over $3.8 billion since starting their lottery in 1973. The District of Columbia has generated net proceeds of over $77 million since starting their lottery in 1982. (See Chart, Appendix A.) These huge revenues are in stark contrast to most tribal games which are much more modest in scope. The Amicus Oneida Tribe runs what is considered to be a large tribal game, but nets only about seven million dollars annually. *See infra* at 12.

All of the *amici* states, except Utah and Mississippi, permit some form of legalized gaming (*see* Chart, Appendix B). While California professes to be "morally opposed to high stakes bingo," their moral abhorrence in this area does not prevent them from running the nation's largest and richest lottery nor does it prevent them from licensing, sponsoring and profiting from pari-mutuel betting on high stakes horse racing. *Id.*

Most Indian tribes govern reservations having few resources which can feasibly be developed. Consequently, the unemployment rate can and does run shockingly high. Recent labor force statistics show reservation Indian unemployment running from 30% (Texas) to 79% (Wyoming). *Indian Service Population and Labor Force Estimates*, January 1985, Bureau of Indian Affairs.

Despite the often crippling economic situation faced by most tribes, Congress has recently passed numerous statutes which have had the net effect of increasing the financial demands on tribal governments. Statutes such as the Indian Self-Determination Act, 25 U.S.C. §§ 450 *et seq.*, have encouraged tribal self-reliance by enabling tribes to assume control of services and programs. The federal government has also promoted economic develop-

ment on reservations by providing financial assistance to Indian tribes and individuals through the Indian Financing Act of 1974, 25 U.S.C. §§ 1451-1543, which is aimed at stimulating tribal economic, social and governmental development. *See also,* Indian Tribal Governmental Tax Status Act, 26 U.S.C. § 7871 (1983); Indian Child Welfare Act, 25 U.S.C. § 1901, *et seq.* (1978); Indian Civil Rights Act, 25 U.S.C. §1301, *et seq.* (1968). The federal policy encouraged by these laws is also supported by the Executive Branch. *See* President Reagan's Policy Statement, January 16, 1983.

At the same time that Congress has increased the Tribes' self-governing responsibilities, it has reduced the monies available to run their governments. Under these circumstances, it has become clear that the Tribes can only realize independent government in practice by developing their own sources of revenue. States, such as California and the *amici* states, have determined that some forms of gaming are acceptable and have set up various means to raise governmental revenue using this approach. The Tribes have merely done the same.

California and the *amici* states seek to deny tribes the very right that they themselves freely exercise. Yet tribally-operated bingo games neither interfere with a state's ability to raise its own revenue, nor impose any involuntary tax on non-Indians. Nor does any federal law or policy authorize the States to make such a severe intrusion into tribal self-government.

Tribal governments must look to their own meager resources to assure economic and political self-sufficiency. This Court has recognized the vital roll that revenue-raising must play in the strengthening of tribal governments. Institution of gaming on reservations as a means to raise

tribal revenue is a political decision that tribes have made. Most state governments have reached this same conclusion. This Court must not throttle tribal initiative to preserve a state revenue-raising monopoly.

II.

ABSENT CONGRESSIONAL DELEGATION OF POWER TO THE STATES, INDIAN TRIBES RETAIN EXCLUSIVE JURISDICTION TO REGULATE ON-RESERVATION ACTIVITY.

A. Indian Tribes are Subject to State Control Only upon Congressional Delegation.

This Court has long respected the independent status of Indian tribes. *See Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). Despite the modification, in light of the changed circumstances of the status of tribes, it is still the law that " . . . tribal sovereignty is dependent upon and subordinate to, only the Federal government, not the states." *State of Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134, 154 (1980); *Rice v. Rehner, supra* at 719.

Recent decisions by this Court have recognized two separate and related barriers to assertions of on reservation state authority; "Congressional authority and the semi-independent position of Indian tribes." *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980); *Rice v. Rehner, supra* at 718-19.

Congress has plenary authority over tribes and can use that authority to reduce the inherent sovereign powers of tribes. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 566-68 (1903); *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 594 (1977); *National Farmers Union Insurance Company v. Crow Tribe*, 471 U.S. —, 85 L.Ed.2d 818, 824, 105 S.Ct. 2447 (1985). Congress must, however, state its intention

to abrogate tribal authority clearly or the intent must be manifest from the surrounding legislative history. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Menominee Tribe v. United States*, 391 U.S. 404, 405-06 (1968); *DeCoteau v. District Court*, 420 U.S. 425, 447 (1975); Cohen, *Handbook of Federal Indian Law* 223, 282-83 (1982 ed.).

The status of tribes as semi-sovereign entities cannot be ignored by the Court. While their independent power has sometimes been referred to as a "backdrop," nevertheless, the powers of an Indian tribe are ". . . *inherent powers* of a limited sovereignty which has never been extinguished." *United States v. Wheeler*, 435 U.S. 313, 323 (1978) (emphasis added); *United States v. Antelope*, 430 U.S. 641 (1977).

Absent a federal statute which delegates power to the States, the inherent power of Indian tribes generally to govern their reservations remains inviolate. *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164, 179-180 (1973); *Williams v. Lee*, 358 U.S. 217, 219 (1959); Cohen, *supra*, at 267-275.

B. The Authority of Tribes to Regulate Reservation Activity is Well Established.

It is well established that tribal authority to regulate matters involving on-reservation conduct (either Indian or non-Indian) which directly affects a tribe and/or its members is entitled to the strongest protection from state interference. *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983). This is particularly true in the area of taxation where this Court has recently noted, "The power to tax transactions occurring on trust lands and significantly involving a tribe or its members is a fundamental attribute of sovereignty . . ." *Confederated Tribes*, *supra* at 152. The principle that Indian sovereign authority sur-

vives absent a clear legislative extinguishment is especially strong in the area of tribal taxing authority. "[F]ederal laws to date have not worked a divestiture of Indian taxing power." *Id.* The Court has recently upheld the rights of tribes to tax transient, non-traditional, non-Indian activity that takes place on the reservation. *Kerr-McGee Corporation v. Navajo Tribe of Indians,* 471 U.S. —, 85 L.Ed. 2d 200, 107 S.Ct. — (1985); *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973). This Court has also held that tribal interests are strongest "... when the revenues are derived from value generated on the reservation by activities involving the Tribes and when the Taxpayer is the recipient of tribal services." *Confederated Tribes, supra* at 157.

Lastly, this Court has recognized that Indian inherent sovereign authority is compelling when the on-reservation activity directly affects tribal ability "to govern their membership." *Williams, supra* at 220. These cases establish that Indian tribes retain general civil regulatory control when the activity in question significantly involves tribes or their members while on their reservation, or when exclusive tribal control is necessary to preserve tribal governmental functions in the face of state action that "infringes on the right of reservation Indians to make their own laws and be ruled by them." *Id.* at 220; *Confederated Tribes, supra* at 152.

1. Bingo Involves On-Reservation Activity That Directly Impacts Tribal Government And Tribal Members.

Each of the *amici* tribes which conducts bingo does so on land held in trust by the United States. Indeed, under the reasoning of *Seminole Tribe v. Butterworth, supra,* and its progeny, high stakes bingo is possible only because the games are occurring within a tribe's Indian country. Tribes which conduct bingo operations directly are heavily involved in the day to day operation of the game. Many

have made extensive financial commitments to the game and have secured BIA loans to finance their businesses. Generally, the proceeds from the bingo games are dedicated to tribal government operations or services, besides providing employment opportunities for tribal members.

The bingo operation of the Leech Lake Band of Chippewa Indians of Minnesota is not atypical. The Tribe has secured a $250,000 grant from the Department of Housing and Urban Development, a $650,000 guaranteed loan through the Bureau of Indian Affairs, and has committed $453,000 of its own tribal monies to achieve the $1.3 million financial package that was necessary to build the bingo hall and to secure the necessary equipment. *A Bill to Establish Federal Standards and Regulations for the Conduct of Gaming Within Indian Country and for Other Purposes,* 1986: Hearings on S.902 Before the Senate Select Committee On Indian Affairs, 99th Cong., 2d Sess. (1986). (Statement of Hartley White). The Tribe manages the operation itself. The bingo hall was constructed with the tribe's own construction company. The games employ 65 tribal members, nearly all of whom are Indian. The net income from the game is earmarked as follows: 50% for general governmental support, 30% for constituent services and 20% to provide various health, education and welfare benefits. *Id.*

Tribes take a significant financial and political risk when they decide to run bingo games. The tribal council must decide whether their community favors the conduct of such activity within the reservation. Tribal members must also be convinced that the games are being run fairly and that the profits are being put to good use. If the reservation voters are not convinced of the worth of keeping the operation, they have the power to vote out of office those who permitted the practice and to elect tribal mem-

bers who have a mandate to address the causes of dissatisfaction.

This is true whether tribes manage their own operations or oversee the performance of a management company. Ultimately, the tribal council is seen by the tribal membership as the entity that is responsible for how the game is run.

2. Tribes Generate Value From Their Bingo Games.

There is value being generated by the conduct of the bingo games. The value is entertainment. People come to the reservation to be entertained by the prospect of gradual, though not often complete, progress toward a goal of winning a large amount of money for a comparatively small investment.[1]

Obviously, most players who participate in the bingo games do not win. They are, rather, entertained by the prospect of winning and derive satisfaction from the process and not the profit derived from the enterprise.

Unlike *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463 (1976), and *Coufederated Tribes, supra*, which involved a simple buy/sell transaction, the bingo games entail a complex process where people come to the reservation to participate in an activity which provides recreation and has obvious intrinsic value to the participants.

There is a good deal of planning and skill that must be employed. The types of games must be varied to ensure continued interest. The value of the games and other

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[1]At the bingo games conducted on the Santa Ynez Reservation, for example, patrons are charged $20-$60 for bingo cards which enable them to play from 15 to 21 regular games having a potential payoff ranging from $500 to $1000 a game. Special "big jackpot" games can pay anywhere from $1000 to $25,000. Door prizes such as cars, etc. are not unusual.

prizes must be maximized while, at the same time, ensuring an adequate return on investment. Safety for the players, their winnings and property must be assured. The games must be run on time and without error. There must be obvious and effective procedures to ensure that the games are both perceived and in fact are run in an honest fashion. The entertainment value derived from bingo is difficult to consistently achieve and is a far cry from the simple smoke shops involved in *Moe* and *Confederated Tribes, supra*. There is, in short, tangible value generated from the gaming activity of tribes.

3. Bingo Is A Legitimate Method Of Raising Tribal Revenue And Is Exempt From State Interference.

The attached Appendix A shows the number of states that conduct a state run lottery.[2] Each state which conducts state sponsored gambling dedicates the use of that revenue to governmental purposes. Many simply funnel these monies to the state's general fund, but often states have earmarked those funds for specific governmental activities, such as education, senior citizen programs or economic development. (Appendix B.)

Each of the lottery states has set up administrative agencies to run their games and have passed comprehensive legislation to govern the conduct of the games. *Id.* The lotteries raise revenues for governmental purposes

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[2]As further shown by Appendix A, these revenues are considerable, range from a low of $5.2 million to a reported high of $1.3 *billion* dollars. None of the states running lotteries prohibit out of state citizens from playing their game. In fact, such participation is actively sought. Recently, three states (Maine, New Hampshire and Vermont) have joined into one combined lottery for the express purpose of enticing their respective citizens to play their lottery rather than the larger and more lucrative New York lottery.

through the voluntary involvement of players from both within and without the states. In essence, a state lottery is simply a voluntarily assumed tax which results in an increase in state revenue.

Tribal bingo operates in a similar manner. Tribes have dedicated their revenue from bingo to provide governmental services. *Amicus* Oneida Tribe of Wisconsin, for example, reported that of a tribal fiscal year 1986 budget of $34 million, bingo revenue directly accounted for $7.2 million. This money was spent on a variety of projects including education, elderly assistance and economic development. Hearings on S.902, *supra*. (*See* Fact Sheet Supplied by Oneida Tribe of Wisconsin.) Hartley White, Chairman of the Leech Lake Chippewa Tribe has stated to Congress that the $163,427 in bingo receipts was divided 50% to general support, 30% for services and 20% to supplement tribal health, education and welfare. *Id.* (*See* Statement of Hartley White.)

State legislatures have made the determination that gambling is an acceptable method of generating governmental revenue. Indian tribes frequently have weak economies and are heavily dependent upon federal monies. Like the state legislatures, Indian tribes have determined that gaming is an acceptable method of funding tribal activity. Gaming income provides many tribes with their only opportunity to become economically independent from the federal government.

In all cases, the Tribes have passed tribal regulations which govern the conduct of the games. Like the state lotteries, tribal bingo provides badly needed revenue which is derived from residents and non-residents alike through voluntary participation in government-conducted gaming.

III

PUBLIC LAW 280 DOES NOT AUTHORIZE STATES TO REGULATE BINGO GAMES OPERATED BY INDIAN TRIBAL GOVERNMENTS ON TRIBAL RESERVATION TRUST LAND.

California argues that it has the right under the authority of Public Law 280 to directly control tribal government-operated bingo games on Indian reservations. The essence of California's argument is that Public Law 280 authorizes States to comprehensively regulate Indian tribes on reservation trust land. If California's interpretation of Public Law 280 is accepted, it would mean in effect that Congress has delegated a substantial portion of its plenary power over Indian tribes to the States. Public Law 280 has never been, and cannot be, so broadly read.

A. California's bingo statute is a civil regulatory law, and therefore may not be applied to tribal bingo under the authority of Public Law 280.

In *Bryan v. Itasca County*, 426 U.S. 373 (1976), the Court interpreted Public Law 280 as not authorizing a state to impose its civil regulatory laws within Indian country.[3] The Court specifically held that state civil regulatory laws were not included within Public Law 280's grant of jurisdiction. *Bryan*, 426 U.S. at 384, 387, 388, 390.[4]

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[3]While the Act expressly grants limited criminal and civil jurisdiction to the States, it nowhere states that state laws may be applied to tribes. Public Law 280 cannot be construed as conferring state jurisdiction over Indian tribes. *Bryan v. Itasca County*, 426 U.S. 373, 389 (1976); *Three Affiliated Tribes v. Wold Engineering (Three Tribes II)*, 476 U.S. —, 90 L.Ed.2d 881, 894-895 (June 16, 1986) (quoting from *Bryan, supra*).

[4]Although *Bryan* involved a tax law, the unanimous Court viewed it as one of a class of regulatory laws. *Id.* at 390. This view of tax laws is firmly grounded in the Court's decisions. *See Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U.S. 412, 425-427 (1937) (Upholding tax on chain stores as regulatory meas-

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Since *Bryan*, lower federal courts have developed a test for determining when a state law is civil regulatory for purposes of Public Law 280. The need for such a test is clear. Without some kind of inquiry into the purpose and effect of a state law, a state that has assumed Public Law 280 jurisdiction could label a civil regulatory scheme as "criminal", attach a criminal penalty for its violation, and apply it on an Indian reservation. By disguising a regulatory scheme in prohibitory "clothing" a state could easily frustrate the Congressional purpose. Even *amici* states agree that such a subterfuge is not permitted under Public Law 280. Brief of *Amici* Minnesota at 23; Brief of *Amici* Washington, et al., at 11. Indeed, this Court has identified this potential problem in a similar context. *See, Johnson v. Yellow Cab Transit Co.*, 321 U.S. 383, 389 n.8 (1944).

1. The civil/regulatory-criminal/prohibitory test is a necessary and proper method for determining whether Public Law 280 authorizes state law to be applied on an Indian reservation.

This "civil/regulatory-criminal/prohibitory" test adopted by the courts looks at whether or not the state's public policy, as expressed through its laws, *generally* permits or *generally* prohibits, a particular kind of conduct or

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ure designed to adjust competitive inequalities experienced by local stores). Although the tax measure in *Bryan* may have been of a revenue-raising rather than a regulatory kind, there was no reason why the Court's decision should have distinguished the source of the taxing power in determining the intent and effect of the law itself. The *Bryan* case required the interpretation of a federal statute. In deciding what Congress intended to include within the term "civil laws of the State", the Court necessarily reached the question of the Act's scope. Therefore, the Court's reference to civil regulatory laws was necessary to the holding, and was not *dictum*. *See*, e.g., *Florida Central R.R. Co. v. Schutte*, 103 U.S. 118, 143 (1881).

activity. An exception or two alone does not remove a statute from the prohibitory framework. *See*, e.g., *United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977) (State fireworks laws); *United States v. Farris*, 624 F.2d 890 (9th Cir. 1980), *cert. denied*, 449 U.S. 1111 (1981) (State casino gambling laws). The more exceptions, however, the more likely the law will be found to be regulatory rather than prohibitory, because it evinces a public policy which generally allows, rather than prohibits, the conduct or activity. *See*, e.g., *Barona Group v. Duffy*, 694 F.2d 1185 (9th Cir. 1982), *cert. denied*, 461 U.S. 929 (1983); *Seminole Tribe v. Butterworth*, 658 F.2d 310 (5th Cir. 1981), *cert. denied*, 455 U.S. 1020 (1982); *Seneca-Cayuga Tribe v. Oklahoma*, — F. Supp. —, Nos. 85-C-639-B, 86-C-393-B (N.D. Okla., June 5, 1986).[5]

The civil/regulatory-criminal/prohibitory test has been roundly criticized by California and the *amici* states Yet it is no different than any other appropriate judicial inquiry into legislative purpose. In other words, it looks to the general purpose underlying the legislative scheme. *See*, e.g., *Bryan*, *supra*; *Three Tribes II*, *supra*, 90 L.Ed.2d 881, *in passim*, and at 895. This is not to suggest that the test is a simple one or that it is easy to apply in every case. Nevertheless, the difficulty of the inquiry does not justify abandoning the effort. The alternative tests sug-

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[5] Several *amici* states argue that the test is unworkable, and they cite to examples such as murder and traffic laws. The test applies equally well to these other areas. An "exception" to murder, e.g., self-defense, does not transform the general criminal prohibition into a regulatory scheme. Murder is generally prohibited, and the few "exceptions" there are do not make it less so. Traffic laws, on the other hand, may be more regulatory in nature, since states generally permit and license the operation of motor vehicles, subject to certain limited exceptions.

gested by *amici* states do not afford a better approach to determine whether a state law properly is within the scope of Pub. L. 280. The test is necessary and, as presently constituted, provides adequate guidance to the courts.

2. California's bingo statute is civil regulatory for purposes of Public Law 280.

California distinguishes tribal bingo from state licensed bingo by calling the former "high stakes, unregulated" bingo. It is this high stakes, unregulated bingo that state law prohibits, says California. And, since high stakes unregulated bingo is prohibited as a matter of state public policy, the state statute is a criminal prohibitory law, and Public Law 280 applies.

Even if California's premise is accepted—that state law prohibits high stakes, unregulated bingo—its conclusion, that public policy therefore prohibits it, does not necessarily follow. To determine the general state legislative purpose, one cannot focus narrowly on the bingo law alone. Instead, one must examine the state's policy on high stakes gambling in general. Does California generally permit high stakes gambling or does it generally prohibit it?

What the legislative scheme reveals is that California permits high stakes gambling. It runs a state-wide multimillion dollar lottery, and regulates high stakes betting on horse races at State sanctioned tracks. These high stakes games are played at will by Californians and by non-residents, providing substantial revenues for State government. So it cannot be said that California *prohibits* high stakes gambling. Although high stakes *bingo* is not permitted, it is not for the reason that high stakes gambling will unavoidably attract organized crime—otherwise,

California would not permit other forms of high stakes gambling. The reason is that only *unregulated* high stakes gambling is prohibited. It is significant to note that California does not argue that high stakes *regulated* bingo is against its public policy. Indeed, it cannot make that argument. Not only does California permit other forms of high stakes gaming, it actively participates in their operation. California concedes that concern over the unregulated nature of the games is at the heart of its public policy. *See* Appellant's Brief at 40.

What California argues is that its public policy prohibits the kind of bingo games operated by Indian tribes because they are unregulated, high stakes gambling. Without regulation, it argues, the high stakes nature of the games will attract organized crime.

However, California's characterization of tribal bingo games as "unregulated" is simply incorrect. The games are directly regulated and operated by the Tribes themselves, with the assistance of the Federal government. As such, the tribal games are regulated in the same manner as the State regulates other forms of high stakes gaming. The only difference is in *who* does the regulating.

Since the tribal games are regulated by the Tribes themselves, there is no conflict with the State's public policy. What this reveals is the State's real interest—being the *exclusive* regulator of high stakes gaming on Indian reservations. Yet the State offers no justification for why it, and not the Tribes, should have this exclusive right.

The result sought by the State would require a ruling that tribes may not engage in or regulate activities which, although they do not violate state public policy, the State has chosen not to engage in or regulate. Such a result would reduce tribes to complete dependence on a

state's will for their survival, making them "little more than 'private, voluntary organizations,' *United States v. Mazurie*, 419 U.S. 544, 557 (1975)", *Bryan v. Itasca County*, 426 U.S. at 387-388, and would effectively diminish federally created Indian reservations without express Congressional action. *See Solem v. Bartlett*, 465 U.S. 463, 470 (1984); *Bryan* at 393.

"The . . . jurisdictional scheme requires the Tribe to accept a potentially severe intrusion on the Indians' ability to govern themselves according to their own laws. . . ." *Three Tribes II, supra*, 90 L.Ed. 2d at 893. "This result simply cannot be reconciled with Congress' jealous regard for Indian self-governance." *Id.*

> Pub. L. 280 certainly does not constitute a "governing Act of Congress" which validates this type of interference with tribal immunity and self-government. We have never read Pub. L. 280 to constitute a waiver of tribal sovereign immunity, nor found Pub. L. 280 to represent an abandonment of the federal interest in guarding Indian self-governance.

Id. at 894.

B. Even if Public Law 280 does apply to Tribes, State bingo statutes like California's are expressly excluded from the Act's coverage.

California characterizes its statute regulating bingo as a criminal law, in part because of the law's location within the State's Penal Code. Whether construed as such, or more properly viewed as a civil regulatory law, *see* discussion *supra*, it is excluded from the coverage of Public Law 280 by the express terms of the Act itself.[6]

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[6]The language of sections 2(b) and 4(b) read as follows:

"Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the

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Both sections 2(b) (state criminal laws), 18 U.S.C. §§ 1162(b), and 4(b) (state civil laws), 28 U.S.C. § 1360(b), expressly exclude from the Act any state laws that seek to regulate the use of Indian trust property "in a manner inconsistent with" federal law.[7] The bingo games California and other States seek to regulate are conducted on land held in trust for the Tribes by the United States under the authority of the Mission Indian Relief Act, 26 Stat. 712 (1891). Land is held in trust for many other tribes under authority of the Indian Reorganization Act, 25 U.S.C. § 476 (IRA). These Acts, and numerous other Federal laws, are intended to encourage and promote tribal self-government and economic development.

To permit the States to restrict the operation of tribal bingo games on tribal trust land would directly impede

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United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein." 18 U.S.C. § 1162(b) and 28 U.S.C. § 1360(b).

[7]The language in section 4(b) of Public Law 280, which is identical to that in 2(b), has been interpreted by the courts. In *Santa Rosa Band v. Kings County*, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977), county zoning and building ordinances were found inapplicable to an Indian reservation because they were "inconsistent" with federal statutes promoting improvement of Indian housing, in that they "impeded", "detracted from", or "hindered" programs funded or administered under those statutes, 532 F.2d at 668, and because they were inconsistent with Secretarial regulations adopted pursuant to federal statute, *Id.* at 665, 666; *see also* 25 C.F.R. 1.4. State laws have also been found, under Public Law 280, to be inconsistent with tribal exercise of powers under the Indian Reorganization Act, *Quechan Tribe v. Rowe*, 350 F. Supp. 106 (S.D. Cal. 1972), *aff'd and remanded*, 531 F.2d 408 (9th Cir. 1976), and with Secretarial regulations, *Metlakatla Indian Comm. v. Egan*,

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and hinder the Congressional purposes for which these laws were enacted.[8]

IV.

RICE v. REHNER IS NOT CONTROLLING IN THIS CASE.

A. The Tribal "Tradition" Analysis Of Rice Is Not Applicable To The Question Of Whether P.L. 280 Vests The States With Authority To Regulate Tribally-Operated On-Reservation Gaming Activities.

In *Rice v. Rehner, supra,* this Court interpreted 18 U.S.C. § 1161, a federal statute which specifically addressed the subject of liquor licensing and distribution in Indian country. In essence, the Court held that § 1161 withdrew the absolute federal prohibition against the sale and distribution of liquor in Indian country in favor of joint tribal and state jurisdiction. *Id.*, 463 U.S. at 728. The Court's statutory analysis in *Rice*, which focused on the history of extensive federal intervention in the Indian liquor trade, is not appropriate to an analysis of tribal regulatory authority over gaming activities under Public Law 280.

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369 U.S. 45, 56-57 (1962). *Compare also, New Mexico v. Mescalero Apache Tribe,* 426 U.S. at 334 ("State jurisdiction is preempted by the operation of federal law if it *interferes with or is incompatible with federal and tribal interests reflected in federal law . . .*") (Emphasis added).

[8]Analysis under the express exclusions of sections 2(b) and 4(b) does not require the balancing of tribal, state and federal interests. Therefore, the state interest is not relevant. However, even if the state interest were applied to Public Law 280, the availability of tribal and federal regulation of tribal bingo games, together with the federal and tribal interests in promoting tribal economic development, outweigh any state interest in preventing the possible intrusion of organized crime. "In sum, the State's interest is overly broad and overly intrusive when examined against the backdrop of the federal and tribal interests implicated in this case. *See Rice v. Rehner,* 463 U.S., at 719." *Three Tribes II,* 476 U.S. at —, 90 L.Ed.2d at 895 (O'Connor, J., writing for the Majority). *See also,* generally, *New Mexico v. Mescalero Apache Tribe, supra.*

First, Public Law 280, unlike § 1161, does not speak to specific subject matter (e.g., liquor, gaming, etc.) in which a tradition of tribal immunity from state regulatory power is particularly relevant, but is a qualified grant of jurisdiction to the States in the general areas of criminal and civil jurisdiction.[9] In the absence of a federal statute, analogous to § 1161, which specifically addresses the subject area of gambling on Indian reservations.[10] there is no legal basis for restricting tribal regulatory power over on-reservation gaming activities based on the alleged lack of a tribal "tradition" of engaging in high stakes bingo.

Second, in the absence of such a "narrow context," as existed in the area of liquor regulation in *Rice*, any inquiry into tribal tradition must broadly focus on Indian tribes as governmental entities vested with the inherent authority to engage in the full range of governmental functions. "Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a result of their dependent status." *United States v. Wheeler*, 435 U.S. 313, 323 (1978). To define tribal sovereignty by reference to a static concept of tradition would foreclose all activities except those which could be specifically documented as an element of tribal historical tradition or culture.[11] Moreover, to do so would

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[9]Also, in 28 U.S.C. § 1161 Congress *expressly* delegated to both the Tribes and the States a share of the exclusive federal power to regulate Indian liquor trade. *Rice*, 463 U.S. at 728-729. The limited grant of civil jurisdiction to the States in Public Law 280 is simply not comparable.

[10]The Organized Crime Control Act, 18 U.S.C. § 1955, is not such a statute. It does not grant any jurisdiction to the States, much less the kind of sweeping regulatory jurisdiction that California is attempting to assert over the appellee tribes.

[11]Neither the States nor the Federal Government would ever advocate such a restrictive test to define the scope of *their* modern-day exercise of inherent governmental powers.

deprive Indian tribes of the ability to exercise their powers of self-government in a modern context, thus effectively denying them access to revenues which serve to advance the federal goal of tribal economic self-sufficiency.

Third, as the Ninth Circuit correctly pointed out, it is not the nature of the particular activity that is controlling, but rather what underlying tribal governmental function is being exercised. *Cabazon Band v. County of Riverside*, 783 F.2d 900, 906 (9th Cir. 1986). Though here the specific activity is high stakes bingo, the governmental function being exercised is that of revenue-raising for the specific purpose of supporting tribal programs and generating badly-needed Indian employment.

Fourth, the Court's inquiry into tribal tradition in *Rice* was motivated by the historical backdrop of comprehensive federal efforts to control the Indian liquor trade, to the exclusion of any inherent tribal authority. In this case, in the absence of such a unique context, the Court's analysis of Public Law 280 in *Bryan v. Itasca County*, *supra*, is controlling. In *Bryan* the Court applied well-established canons of statutory construction in Indian cases, most significantly the canon that state laws generally are not applicable on Indian reservations except where Congress has expressly provided that they shall apply. *Id.*, 426 U.S. at 377. The Court abandoned this assumption in *Rice* only because of the unique history of affirmative Congressional divestment of tribal power over the Indian liquor trade: ". . . that assumption would be unwarranted in the *narrow* context of the regulation of liquor." Emphasis added; *Rice*, *supra*, at 723. In thus refusing to apply the assumption in favor of exclusive tribal authority, the Court in *Rice* concluded that the Indian tribes had been completely divested of "any inherent self-government over liquor regulation." *Id.* at 726.

Thus, the tribal tradition analysis is only appropriate if there is evidence that Congress has divested the Tribes of their inherent authority to regulate specific subject matter. This is not the situation here. The unique context of the *Rice* decision thus serves to narrowly restrict the application of its tribal tradition test.

B. The Ninth Circuit Properly Limited The Holding In Rice To Its Specific Factual And Legal Context.

Rice involved a unique situation where Congress had, as early as the American Colonial Period, completely divested Indian tribes of any inherent regulatory power over liquor, and then, by passage of 18 U.S.C. § 1161 in 1953, had restored what appeared to be a large measure of that power. In analyzing § 1161, it was therefore reasonable for the Court in *Rice* to examine the lack of a tradition of tribal involvement in the specific subject area of liquor. However, tribal gaming activities are different because these activities, and the tribal authority to license or regulate them, have not been subjected to an historical treatment similar to that accorded liquor trade in Indian country.

There is a lack of any evidence in the record to substantiate either a partial or total divestment by Congress of inherent tribal power to regulate on-reservation gaming activities. By contrast, in *Rice*, this Court found that "the tribes have long ago been divested of any inherent self-government over liquor regulation by both the explicit command of Congress and as a 'necessary implication of their dependent status.'" *Id.*, at 726. A similar divestiture in the area of gaming was not found by the Ninth Circuit.

The Ninth Circuit thus found it "unnecessary" to follow the "narrow" analytical focus of *Rice*. Instead, the court stated the test as "whether the tribe is engaged in a

traditional governmental function, not whether it historically engaged in a particular activity." *Cabazon, supra*, 783 F.2d at 906. In the absence of congressional divestment of inherent tribal governmental functions, rules of statutory construction in Indian cases require that Congress expressly provide that the States have jurisdiction to regulate on-reservation gaming activities. Congress has simply not done so.

C. The Federal Courts Have Been Unwilling To Extend The Tribal Tradition Analysis Of Rice Beyond Its Narrow Context.

Consistent with our analysis of *Rice* herein, the federal courts have been unwilling to extend the tribal tradition test beyond its narrow context in *Rice*. To inject a tradition analysis into every conflict between the States and the Tribes over the on-reservation exercise of tribal regulatory power is to invite the defeat of tribal efforts to develop reservation economies, and, thus, to bring about the eventual demise of Indian self-government. The courts have rejected such an unprincipled approach to deciding conflicts between state and tribal regulatory power.

In *Washington v. E.P.A.*, 752 F.2d 1465 (9th Cir. 1985), the court rejected *Amicus* State of California's argument that because Indian tribes had not "traditionally" regulated hazardous waste activities, that *Rice* should be read to authorize state jurisdiction in that area. Instead, the court took a principled position of "respect for the long tradition of tribal sovereignty and self-government" and recognized that contemporary federal policies of encouraging tribal self-government would be effectively thwarted unless tribes could exercise their inherent authority in a modern context to control potential environmental degradation. *Id.*, at 1470-1471. Similarly, in *Quects Band of Indians v. State of Washington*, 765 F.2d 1399

(9th Cir. 1985), vacated and withdrawn on other grounds, 783 F.2d 154 (1986), the court, in determining that the Queets Band possessed the sovereign authority to license and register tribal vehicles (*id.*, at 1403), refused to narrowly focus on the subject matter to be regulated (automobile registration) in determining whether the tribal activity was related to traditional tribal self-government. *See, also, Crow Tribe of Indians v. State of Montana*, 650 F.2d 1104 (9th Cir. 1981), *modified* at 665 F.2d 1390 (1982). Obviously, the licensing and registration of automobiles represents an exercise of tribal regulatory power over non-traditional subject matter. Instead, the court held that, unlike the situation in *Rice*, it had "no cause to believe that the tribes have been implicitly *divested* of that power by virtue of their dependent status." *Id.*, at 1403; emphasis added.

Finally, in *Seneca-Cayuga Tribe v. State of Oklahoma, supra* (Slip Opinion, June 5, 1986), the District Court focused not on the tribal activity engaged in (bingo games), but on the underlying governmental function served by the activity, i.e. the traditional governmental function of revenue-raising to support tribal self-government. *Id.*, Slip Opinion at 14-15.

These cases demonstrate that the analysis of whether a particular tribal activity is a valid exercise of a traditional governmental function cannot be narrowly confined to the specific activity or commodity being regulated. To so confine it is to use the tribal tradition test as an arbitrary and formidable, if not absolute, barrier to Indian self-government and economic self-sufficiency. Few commodities marketed in modern society would be considered within the traditional exercise of tribal sovereignty. Tribal civil regulatory jurisdiction over on-reservation activities would thus be constrained by reference to

commodities or activities prevalent on Indian reservations at some arbitrary point in history. The test of tribal "tradition" would vary from tribe to tribe as traditions and culture vary. In essence, the Tribes would be caught in a political, societal and economic time-warp, limited to exerting exclusive civil regulatory authority over only those on-reservation activities and commodities that have existed on Indian reservations since the 18th or 19th centuries.

Viewing tribal tradition without reference to inherent tribal sovereignty and the implicit capacity of tribes to mold and adapt their governmental functions to address the needs of their people in a technologically complex and ever-changing world reveals the unworkable nature of the tradition analysis when applied beyond the narrow confines of *Rice*. It is not only unworkable, it would be devastating for those poorest of the Indian tribes that lack natural resources, such as coal, oil and timber, and which must, if they hope to achieve a fair measure of self-sufficiency, trade in commodities and engage in activities for which there exists a market in the 20th Century.

D. Since Deciding Rice, This Court In An Analogous Situation Has Repudiated The Use Of Judicial Appraisals Of Whether A Particular Governmental Function Is "Traditional" In Determining The Scope Of Governmental Regulatory Authority.

The Court in *Garcia v. San Antonio Metropolitan Transit Authority*, *supra*, 83 L.Ed.2d at 1021, repudiated as "unsound in principle and unworkable in practice" the use of historical tradition as an analytical tool for determining the scope of state regulatory power. The reasons given in *Garcia* for rejecting historical tradition as a basis for analyzing whether activities fall within the

prerogative of the States to regulate are useful in determining here whether such an "unworkable" test should be imposed, as the *amici* states so vigorously advocate, in analyzing the scope of tribal regulatory power.

In deciding to overrule its decision in *National League of Cities v. Usery*, 426 U.S. 833 (1976), this Court in *Garcia* noted that in the intervening nine years the "federal and state courts have struggled with the task, thus imposed [by the test of *National League of Cities*], of identifying a traditional function for purposes of state immunity under the Commerce Clause." *Garcia, supra*, 83 L.Ed.2d at 1020. Justice Blackmun, speaking for the Majority in *Garcia*, recited a litany of cases wherein courts had grappled with the troublesome task of determining what activities carried out by the States were governmental in nature and therefore beyond the reach of federal regulatory power under the Commerce Clause. *Id.*, at 1025-26. The Court found the distinction between those activities held to be immune, and those that were not, to be "elusive at best." *Id.*, at 1026.

The analysis and language employed by the Court in *Garcia* to disparage the use of tradition as a measure of state immunity are analogous to the present attempt by the *amici* states to relegate tribal governmental power to a situation of suspended animation, caught in a static web of so-called "traditional" functions which, according to the *amici* states, cannot change in content or application to meet the demands made on tribal governments to respond to the changing political, economic and social needs of their people. Such "a *static* historical view of *state* functions generally immune from federal regulation" [emphasis added] had previously been disavowed by the Court in *Transportation Union v. Long Island Railroad Co.*, 455 U.S. 678, 686 (1982).

The following passages from the *Garcia* opinion are paraphrased, substituting the Tribes wherever the States are mentioned and the States wherever the Federal Government is mentioned. The result is a striking adaption of the *Garcia* Court's disparaging analysis of "traditional governmental function" to the equally problematic tribal tradition analysis of *Rice*.

> The most obvious defect of a historical approach to [tribal] immunity is that it prevents a court from accommodating changes in the historical functions of [tribes], changes that have resulted in a number of once private functions like education being assumed by the [tribes] and their subdivisions. At the same time, the only apparent virtue of a rigorous historical standard, namely, its promise of a reasonably objective measure for [tribal] immunity is illusory. Reliance on history as an organizing principle results in line drawing of the most arbitrary sort; the genesis of [tribal] governmental functions stretches over a historical continuum from before the Revolution to the present, and courts would have to decide by fiat precisely how longstanding a pattern of [tribal] involvement had to be for [state] regulatory authority to be defeated.

Id., 83 L.Ed. 2d at 1029-1030. Further, that

> Any rule of [tribal] immunity that looks to the "traditional", "integral", or "necessary" nature of governmental functions inevitably invites an unelected federal judiciary to make decisions about which [tribal] policies it favors and which ones it dislikes.

Id., at 1031. And, finally,

> We therefore now reject, as unsound in principle and unworkable in practice, a rule of [tribal] immunity from [state] regulation that turns on a judicial appraisal of whether a particular governmental function is "integral" or "traditional".

Id.

Though state and tribal governments may differ in terms of specific interests or activities engaged in, similarities do exist in the kinds of basic governmental functions that they exercise. Nevertheless, the *amici* states seek in this case to impose a "tradition" test on Indian tribal governments which the States, in turn, would never suffer to be imposed on themselves, and which has been expressly rejected by this Court.

Thus, in addressing California's and the *amici* states' contention that "tradition" should determine whether an activity is a valid exercise of tribal governmental power, the Court should heed the statement of Justice Blackmun:

> Attempts by other courts . . . to draw guidance from this mode [of traditional governmental functions] have proved it both impracticable and doctrinally barren.

Garcia, supra, 83 L.Ed.2d at 1037.

CONCLUSION

For the reasons given above, the decision of the Court of Appeals for the Ninth Circuit should be affirmed.

Respectfully submitted,

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APPENDIX A

Existing Lottery States

	Date Began	Gross Sales, in millions (* billions)	Net Proceeds (in millions)	Net Proceeds as % of Total State Tax Revenues	Net Proceeds per Capita	Percentage Change in Net Proceeds, 1984 to 1985 Projection of First-Year Gross Sales	Total Net Proceeds to Date	Where the Money Goes
Arizona	July 1, 1981	$72.9	$22	0.7	$7	-22	approx. $115 million	State transportation fund, 30%; prizes, 46%; lottery administration, 25%
Colorado	Jan. 24, 1983	$105.3	$32	1.4	$10	-22	$115.1 million	State capital construction fund, 16%; state conservation trust fund, 12.8%; state division of parks and recreation, 3.2%; prizes 50%; lottery administration, 18%
Connecticut	Feb. 12, 1972	$344.5	$148.8	4.2	$47	41	$715.7 million	State general fund, 37.4%; prizes, 52.1%; lottery administration, 10.5%
D.C.	Aug. 22, 1982	$112	$35	2.3	$57	40	$77 million	State general fund, 31.7%; prizes, 51.7%; lottery administration, 16.6%
Delaware	Oct. 31, 1975	$38.7	$15	1.9	$24	7	$72.3 million	State general fund, 38.7%; prizes, 50.1%; lottery administration, 11.2%
Illinois	July 30, 1974	*$1.2	$516.8	5.6	$45	38	$1.8 billion	Education, 46.7%; prizes, 50%; lottery administration, 3.3%
Maine	June 27 1974	$15.9	$4.4	0.4	$3	2	$27.7 million	State general fund, 27.7%; prizes, 49.7%; lottery administration, 6%
Maryland	May 15 1973	$881	$250.1	5.7	$58	15	$3.8 billion	State general fund, 38.7%; prizes, 53.6%; lottery administration, 7.7%
Massachusetts*	March 22, 1972	*$1.3	$341.1	5.1	$59	34	approx. $1.5 billion	Cities and towns (for revenue sharing), 34.1%; prizes, $56.1%; lottery administration, 9.8%
Michigan	Nov. 13, 1972	$885.5	$380	4.4	$28	53	approx. $2.1 billion	K-12 education, 40%; prizes, 49%; lottery administration, 11%
New Hampshire	March 12, 1964	$13.7	$4.3	1.0	$4	-25	$189.8 million	Education, 28.3%; prizes, 48.1%; lottery administration, 23.6%

	1970							$2 billion	9%
New York	June 1, 1967	*$1.3	$600	2.8	$34	54		$2.2 billion	Two formulas, depending on game: education, 45%; prizes, 40%; lottery administration, 15%; or education, 35%; prizes, 50%; lottery administration, 15%
Ohio	Aug. 12, 1974	$854.6	$338.6	4.1	$31	35		$1.2 billion	Education, 39.6%; prizes, 49.3%; lottery administration, 11.1%
Pennsylvania	March 7, 1972	*$1.3	$585	5.6	$47	13		$2.5 billion	Senior citizens programs, 43%; prizes, 48%; lottery administration, 9%
Rhode Island	May 18, 1974	$52.3	$18.7	2.1	$19	2		$140 million*	State general fund, 36%; prizes, 50.4%; lottery administration, 13.6%
Vermont	Feb. 14, 1978	$5.2	$1.2	0.2	$2	−8		$8.5 million	State general fund, 25%; prizes, 50%; lottery administration, 25%
Washington	Nov. 15, 1982	$149.5	$51.9	1.1	$12	−24		$200.6 million	State general fund, 40%; prizes, 45%; lottery administration, 15%

*Massachusetts figures are calendar year, not fiscal.

New Lottery States

California	Oct. 3, 1985						$1 billion		Education, 34%; prizes, 50%; lottery administration, 16%
Iowa	Aug. 22, 1985						$114 million		Economic development, 31.5%; prizes, 47%; lottery administration, 21.5%
Missouri	Jan. 20, 1986						$250 million		State general fund, 45%; prizes, 45%; lottery administration, 10%
Oregon	April 25, 1985						$110 million		Economic development, 34%; prizes, 50%; lottery administration, 16%
West Virginia	Jan. 9, 1986						$24 million		Special lottery fund, 40%; prizes, 46.6%; lottery administration, 13.4%

Sources: Population and tax revenue from the U.S. Census Bureau. Tax revenue is for the year ending in June 1985. Other data gathered from state lottery offices by Linda Payton, senior research analyst/librarian for NCSL and Jane Carroll, senior associate editor of State Legislatures. Data analyzed by Steven D. Gold, director of Fiscal Studies for NCSL.

APPENDIX B

STATES	SLOT MACHINE	OFF-TRACK BETTING
Alaska		
Arizona		
Connecticut		Conn. Gen. Stat. § 12-571 (1983)
Florida		
Idaho		
Kansas		
Louisiana		
Mississippi		
Nevada	Nev. Rev. Stat. § 463.160 (1986)	
New Mexico		
North Carolina		
North Dakota		
Ohio		
Oklahoma		
Oregon		
Rhode Island		
South Dakota		
Utah		
Washington		
Wisconsin		
Wyoming		

STATES	BINGO	JAI LAI	CARDROOMS	BLACKJACK	PUNCH-BOARDS	PULL TABS/ JARS
Alaska	Alaska Stat. § 15.15.100(a) (1984)		Alaska Stat. § 18.15.100(b) (1984)			
Arizona	Ariz. Rev. Stat. Ann. § 5-401 *et seq.* (1975)					
Connecticut	Conn. Gen. Stat. § 7-169 (1983)	Conn. Gen. Stat. § 12-574 (1983)				
Florida	Fla. Stat. § 849.093 (1986)	Fla. Stat. § 551.01 *et seq.* (1972)				
Idaho						
Kansas	Kan. Stat. Ann. 79-4701 *et seq.* (1984)					
Louisiana	La. Rev. Stat. Ann. § 33.4861.1 *et seq.* (1973)					
Mississippi						
Nevada	Nev. Rev Stat. § 463.080 *et seq.* (1986)		Nev. Rev. Stat. § 463.080 *et seq.* (1986)			
New Mexico	N.M. Stat. Ann. § 60-2B-1 (1978)					

North Carolina	N.C. Gen. Stat. § 14-309.1 *et seq.* (1985)				
North Dakota	N.D. Cent. Code § 53.06.1 *et seq.* (1985)		N.D. Cent. Code § 53.06.1 *et seq.* (1985)	N.D. Cent. Code § 53.06.1 *et seq.* (1985)	N.D. Cent. Code § 53.06.1 *et seq.* (1985)
Ohio	Ohio Rev. Code Ann. § 3763.01 (Page 1980)				
Oklahoma	Okla. Stat. Tit. 21 § 995.1 *et seq.* (1983)				
Oregon	Or. Rev. Stat. § 465.100 (1985)				
Rhode Island	R.I. Gen. Laws § 11-19-30 (1984)	R.I. Gen. Laws § 41-7 *et seq.* (1984)			
South Dakota	S.D. Codified Laws Ann. § 22-25-23 *et seq.* (1982)				
Utah					
Washington	Wash. Rev. Code § 9.46.030 (1985)			Wash. Rev. Code § 9.46.-030 (1985)	
Wisconsin	Wis. Stat. § 162.02 *et seq.* (1976)				
Wyoming					

STATES	LOTTERIES	HORSE RACING	THOROUGH-BRED RACING	QUARTER HORSE RACING	HARNESS/ TROTTING/ RACING	GREYHOUND RACING
Alaska						
Arizona	Ariz. Rev. Stat. Ann. § 5-501 *et seq.* (1975)	Ariz. Rev. Stat. Ann. § 5-101 *et seq.* (1975)				Ariz. Rev. Stat. Ann. § 5-501 *et seq.* (1975)
Connecticut		Conn. Gen. Stat. § 12-584 (1981)				
Florida		Fla. Stat. § 550.011 (1972)	Fla. Stat. § 550.40 (1972)	Fla. Stat. § 550.33 (1972)	Fla. Stat. § 550.16 (1972)	Fla. Stat. § 550.063 (1972)
Idaho	Idaho Code § 54-2501 (1979)					
Kansas						
Louisiana		La. Rev. Stat. Ann. § 4.141 *et seq.* (1973)				
Mississippi						
Nevada		Nev. Rev. Stat. § 466.010 *et seq.* (1986)			Nev. Rev. Stat. § 466.130 (1986)	Nev. Rev. Stat. § 244.347 (1986)
New Mexico		N.M. Stat. Ann. § 60-101 *et seq.* (1978)				

North Carolina					
North Dakota					
Ohio	Ohio Rev. Code Ann. § 3770.01 *et seq.* (Pg. 1980)	Ohio Rev Code Ann. § 3769.01 *et seq.* (pg. 1980)	Ohio Rev. Code Ann. § 3769.003 (pg. 1980)	Ohio Rev. Code Ann. § 3769.07 (pg. 1980)	
Oklahoma					
Oregon	OR Rev. Stat. § 461.010 *et seq.* (1985)	OR Rev. Stat. § 462.010 *et seq.* (1985)			OR Rev. Stat. § 462.010 *et seq.* (1985)
Rhode Island		R.I. Gen Laws § 41-3-1 *et seq.* (1984)			R.I. Gen. Laws § 462.010 *et seq.* (1984)
South Dakota		S.D. Codified Laws Ann. § 42-7-47 *et seq.* (1982)	S.D. Codified Laws Ann. § 42-7-47 *et seq.* (1982)	S.D. Codified Laws Ann. § 42-7-47 *et seq.* (1982)	S.D. Codified Laws Ann. § 42-7-47 *et seq.* (1982)
Utah					
Washington	Wash. Rev. Code § 67.70 *et seq.* (1985)	Wash. Rev. Code § 67.16 *et seq.* (1985)			
Wisconsin					
Wyoming		Wyo. Stat. § 11-25-101 *et seq.* (1977)			